IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1677 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CTM TEXTILES MILLS

Versus

YASHINBHAI V RAJPUT

Appearance:

1. Special Civil Application No. 1677 of 1997

MR PC MASTER for Petitioner No. 1

MR NK MAJMUDAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 19/04/2005

CAV JUDGEMENT

#. The petitioner - company, by way of this petition, challenges the common judgment and order of the

Industrial Court, Ahmedabad passed in Appeal (IC) No. 23 of 1995 and Appeal (IC) No. 20 of 1995 dated 30.12.1996, whereby the petitioner - company was ordered to reinstate the respondent with full back wages with all other consequential benefits.

#. The brief facts giving rise to this petition are such that the petitioner company is running a processing factory and doing the work of dyeing, printing and finishing of grey cloth given to the petitioner mills by different customers. At the time relevant time, the establishment was being run on small scale basis and at that time according to the necessity of the establishment, the employees were being appointed. The respondent employee was appointed by an order dated 18.03.1982 as a clerk-typist and was required to do the clerical work, typing work and taking down dictation in long hand of small letters, receiving telephones, filing work etc. His salary was Rs.650/- per month and was given an additional remuneration and thus in all he was being paid Rs.700/- per month. It is the case of the petitioner - company that the respondent never used to do his work honestly and faithfully and always demanded rise in salary. He filed a criminal case against the Managing Director and Manager for the offences under Section 504, 506(1) and 114 of Indian Penal Code and in the Labour Court for getting more salary and arrears for work load. However, all his cases were dismissed. Thereafter, he never used to do his work, never used to come to office in time and misbehaved and never attend to his duties in time. This caused loss to the petitioner - company. He was told by the petitioner in the form of notice that inquiry will be held against him for the aforesaid charges. As no reply was given by the respondent against the said notice, regular inquiry was held against him. As the charges levelled against him in the inquiry were proved, he was dismissed from service by order dated 08.04.1984.

#. The said order of dismissal was challenged before the Labour Court under Sections 78 and 79 of the Bombay Industrial Relations Act, by filing T.Application No. 376 of 1984. After hearing both the parties and taking into consideration the oral and documentary evidence produced, the Labour Court held that the inquiry held by the company was not legal and proper. Against the said order, the petitioner - company filed Revision Application No. 35 of 1990 and after hearing the parties, the Industrial Court, by its judgment and order dated 16.09.1991, allowed the revision application of the petitioner by holding that the inquiry conducted by the

company is legal and proper and remanded the matter to the Labour Court for proceeding according to law. It is the case of the petitioner that during the pendency of proceedings in January, 1988, the respondent - employee had cancer on his hand and ultimately his hand was required to be amputated and from then he was not able to perform his duties. After hearing both the parties, the Labour Court came to the conclusion that the order of dismissal was improper. It was also held that if he is required to be reinstated, he is required to be reinstated in service till January, 1988 and thereafter it is open for the management to retrench his services because of his disablement and also directed the petitioner - company to pay 50% back wages till the date of reinstatement. Against the said order of the Labour Court, the petitioner - company preferred appeal being Appeal (IC) No. 23 of 1995 before the Industrial Court, Ahmedabad and the respondent herein also challenged the same judgment by way of Appeal (IC) No. 20 of 1995 before the Industrial Court, Ahmedabad claiming reinstatement will full back wages. Both the appeals were heard together and decided by common judgment, wherein the appeal of the petitioner - company was dismissed and the appeal of the respondent was fully allowed and the petitioner - company was directed to reinstate the respondent - employee with 100% back wages with all other consequential benefits. It is against this judgment and order, the present petition is filed.

#. Learned advocate for the petitioner - company has primarily submitted that the Industrial Court, in its judgment observed that in the present hard days of unemployment, it will be very difficult for the respondent to maintain his wife and two children and God has also taken away his hand and Government is also not in a position to give work and at this stage the Management should have taken some active steps and therefore the judgment of the Industrial Court is based completely on mercy and humanitarian grounds rather than deciding the matter legally on merits. He submitted that both the Labour Court and Industrial Court found that the inquiry was legal and if they found that the punishment was too harsh, then the punishment could have been reduced instead of ordering reinstatement with full back wages.

#. Learned advocate for the petitioner has relied on the following submissions :

1. Textile Corporation of Marathwada V/s Prabhakar Balajirao Deshpande & Anr. reported in 1997(2) LLJ 446.

2. Mohan Ganpat Nikam V/s NTC (South Maharashtra) Ltd. reported in 1994(2) LLJ 985.

3. Madhukar Murari Pavaskar V/s Hindustan Spinning and Weaving Mills Ltd. reported in 1997 LABIC 2673.

4. Municipal Corporation of Greater Bombay V/s Sopan Yesvant Mohite & Ors. reported in 1996(2) LLJ 1156.

5. Sadhana Textile Industries Pvt.Ltd. V/s Gulabchand Gayadin & Ors. reported in 1994(2) LLJ 906.

6. New Shorrock Mills V/s Mahesbhai T.Rao reported in 1996 LLR 1129 = 1997(1) LLJ 1212 (SC).

7. Maruti Udyog Ltd. V/s Ramanlal & Ors. reported in JT 2005(1) SC 449.

8. Divisional Controller, GSRTC V/s Ratansinh Thakore reported in 1997(2) GLH 230.

9. Rajkot Municipal Corporation V/s Navinchandra I Vyas reported in 1997(2) GLH 331.

10. Gujarat Leather Industries Ltd. V/s Mahendrakumar Pavar and others reported in 2000(2) GLH 648.

12. Bharat Heavy Electricals Ltd. V/s M.Chandrasekhar Reddy and ors. reported in JT 2005(1) SC 474.

13. Bharat Forge Co.Ltd. V/s Uttam Manohar reported in JT 2005(1) SC 303.

#. In the submissions of Mr.Master, learned advocate for the petitioner, in respect of Section 11A of the Industrial Disputes Act, the different courts including the Apex Court have held that the Courts has to exercise power under Section 11A judiciously and not arbitrarily and only in case of a punishment is shocking to the conscience of the court, in that case only the court can interfere with the punishment. In the present proceedings, nowhere the Labour Court or the Industrial Court have held that the punishment was shockingly disproportionate and the Industrial Court has materially erred in ignoring the important aspect that in January, 1988, one hand of the respondent was amputated because of cancer for which the employer is not responsible and due to amputation of his hand, he was not in a position to do his normal works and therefore he should not have been

reinstated. It is further submitted that the respondent employee has preferred Civil Application No. 8461 of 1998 in this Special Civil Application in which this Court (Coram : H.L.Gokhale, J) passed order dated 08.10.1998 by which the respondent employee was reinstated in service from 10.10.1998 and therefore now the question of reinstatement does not arise, which is fairly admitted by the learned advocate for the respondent.

#. Lastly, it is submitted that the citations cited on behalf of the respondent employee are the citations under the provisions of the Industrial Disputes Act and that too under Section 11A of the Act. Now, the present case is covered under the BIR Act and there are judgments to the effect that Section 11A of the ID Act does not apply to the provisions of the BIR Act. Thus, he prayed for allowing this petition by setting aside the judgment and award passed by the Industrial Court.

#. Against the aforesaid submissions, learned advocate for the respondent submitted that this petition itself is not maintainable as this Court cannot sit as an appellate authority while exercising the power under Article 227 of the Constitution of India. The order passed by the Industrial Tribunal is a well reasoned order and therefore no interference is required by this Court. It is further submitted that the petitioner - company has not established inability of respondent - workman with regard to the performance of his duty and the respondent has not stated that he is not in a position to perform his duties. Under the circumstances, in absence of any evidence of disability of the respondent - workman and evidence of gainful employment, the Industrial Court, after considering Sections 78, 79 of the Bombay Industrial Relations Act read with the standing order granted relief of reinstatement of full backwages to the respondent. Therefore, it is prayed that this petition be dismissed.

#. Mr.Majmudar, learned advocate for the respondent has relied on the following authorities :

1. Appaji Tukaram Patil through legal heirs V/s Raosaheb Tukaram Patil reported in 1984 (supp) SCC 429.

2. Colour-Chem Limited V/s A.L.Alaspurkar and others reported in AIR 1998 SC 948.

3. Jitendra Singh Rathor V/s Shri Baidyanath Ayurved Bhwan Ltd. and another reported in (1984) 3 SCC 5.

4. Rajinder Kumar Indra V/s Delhi Administration through Secretary (Labour) and others reproted in AIR 1984 SC 1805.

5. Brahma Chandra Gupta V/s Union of India reported in AIR 1984 SC 380.

6. APSRTC, Cuddapah V/s K.Bajjanna reported in (2002) 9 SCC 739.

7. Parmanand V/s Nagar Palika, Dehradun and others reported in (2003) 9 SCC 290.

8. Scooter India Limited, Lucknow V/s Labour Court, Lucknow reported in AIR 1989 SC 149.

9. Haryana Urban Development Authority V/s Devi Dayal reported in AIR 2002 SC 1313.

10. Bhagat Ram V/s State of Himachal Pradesh and others reported in (1983) 2 SCC 442.

11. Rama Kant Misra V/s State of Uttar Pradesh and others reported in (1982) 3 SCC 346.

12. Ved Prakash Gupta V/s M/s Delton Cable India (P) Ltd. reported in (1984) 2 SCC 569.

##. Preliminary objection was raised by Mr.Majmudar, learned advocate for the respondent that Industrial Court in Appeal (IC) No. 23 of 1995 has dismissed the appeal of the petitioner - company and allowed the appeal of the respondent workman in Appeal (IC) No. 20 of 1995 and therefore separate petition should be filed against both the orders and that by not filing separate petitions, it is difficult to note against which appeal the petition is filed. I am of the opinion that the Industrial Court has disposed of the two appeals by common judgment and therefore it is not necessary to file separate petitions for both the appeals.

##. Mr.Master submitted that when the proceedings are filed before the Labour Court as well as Industrial Court under Section 17 of the BIR Act, the petition can be filed under Sections 78 & 79 of the BIR Act. For this purpose, a reference deserves to be made to following facts : The order of dismissal was challenged before the Labour Court under Sections 78 and 79 of the Bombay Industrial Relations Act, by filing T.Application No.

376 of 1984. After hearing both the parties and taking into consideration the oral and documentary evidence produced, the Labour Court held that the inquiry held by the company was not legal and proper. Against the said order, the petitioner - company filed Revision Application No. 35 of 1990 and after hearing the parties, the Industrial Court, by its judgment and order dated 16.09.1991, allowed the revision application of the petitioner by holding that the inquiry conducted by the company is legal and proper and remanded the matter to the Labour Court for proceeding according to law. It is the case of the petitioner that during the pendency of proceedings in January, 1988, the respondent - employee had cancer on his hand and ultimately his hand was required to be amputated and from then he was not able to perform his duties. After hearing both the parties, the Labour Court came to the conclusion that the order of dismissal was improper. It was also held that if he is required to be reinstated, he is required to be reinstated in service till January, 1988 and thereafter it is open for the management to retrench his services because of his disablement and also directed the petitioner - company to pay 50% back wages till the date of reinstatement. Against the said order of the Labour Court, the petitioner - company preferred appeal being Appeal (IC) No. 23 of 1995 before the Industrial Court, Ahmedabad and the respondent herein also challenged the same judgment by way of Appeal (IC) No. 20 of 1995 before the Industrial Court, Ahmedabad claiming reinstatement will full back wages. Both the appeals were heard together and decided by common judgment, wherein the appeal of the petitioner - company was dismissed and the appeal of the respondent was fully allowed and the petitioner - company was directed to reinstate the respondent - employee with 100% back wages with all other consequential benefits.

##. It is submitted that the Industrial Court, in its judgment observed that in the present hard days of unemployment, it will be very difficult for the respondent to maintain his wife and two children and God has also taken away his hand and Government is also not in a position to give work and at this stage the Management should have taken some active steps and therefore the judgment of the Industrial Court is based completely on mercy and humanitarian grounds rather than deciding the matter legally on merits. Moreover, Mr.Master has taken me through the pending inquiry report dated 08.02.84 and submitted that the respondent workman misbehaved while on duty. Mr.Master submitted that the Industrial Court has erred in coming to the conclusion

that the behaviour of the respondent workman of going to bathroom and lunch room for a long time cannot be said to be misconduct and allowed the appeal of the respondent workman. In my opinion, these acts of remaining absent from his seat for a long time can be said to be indiscipline and can be said that when all other people are working honestly and sincerely, the respondent used to waste his time by doing the aforesaid acts instead of doing his work. The Industrial Court has come to the conclusion that though the employee has committed misconduct, it is not that much grave which can effect his employment. Relying on the judgments reported in (1978) 3 SCC 370 and (1980) SCC 478 on page 21 of the judgment, the Industrial Court has observed that there is no act of indiscplineness to such an extent that it should effect his employment. I am bound by the judgments of the Hon'ble Apex Court, but the facts of those cases are different from the facts of this case and therefore do not apply to this case.

##. While going through the judgment of the Industrial Court, I am of the opinion that it is perverse and cannot be sustained on a better footing. I am of the opinion that the judgments cited by Mr.Majmudar, learned advocate for the respondent herein are the judgments related to Industrial Disputes Act, 1947 and the judgments cited by Mr.Master, learned advocate for the petitioner herein are the judgments related to Bombay Industrial Relations Act. The standing orders framed under Bombay Industrial Relations Act, 1946 can apply to the petitioner company. Section 23 of the Standing orders is regarding acts and omissions constituting misconduct, wherein (a) states that wilful insubordination or disobedience of any lawful and reasonable order of a superior and (l) commission of any act, subversive of discipline or good behaviour on the premises of the undertaking shall amount to misconduct. Section 24 is regarding punishment for misconduct, wherein sub-section 5 states that (5) An employee against whom any action is proposed to be taken under sub-clause (b) or (c) of clause (1) of this Standing order may be suspended pending the holding and completion of an inquiry or for the period, if any, allowed to him for giving for explanation. The order of suspension may take effect immediately on its communication to the employee. If as a result of enquiry held or explanation tendered, it is decided not to take any action under clause (l), the employee shall be deemed to have been on duty and shall be entitled to full wages and all privileges for the full period of the suspension.

##. In the case of New Shorrock Mills (supra), the

Hon'ble Supreme Court has held in para 8 as under :

"It appears to us that the Labour Court completely misdirected itself in ordering the respondent's reinstatement with forty per cent back wages. The Labour Court was exercising jurisdiction under Section 78 of the Bombay Industrial Relations Act, 1946. It had the jurisdiction, inter alia, to decide the disputes regarding the propriety and legality of an order passed by an employer acting or purporting to act under the standing orders. The Labour court, in the present case, having come to the conclusion that the finding of the departmental enquiry was legal and proper, respondent's order of discharge was not by way of victimization and that the respondent workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the court could come to the conclusion that the punishment which was awarded was shockingly disproportionate to the employee's conduct and his past record. The Labour Court completely overlooked the fact that even prior to the incident in question the respondent had misconducted himself on several occasions and had been punished. According to the appellant there were atleast three other instances where the respondent had misconducted himself and that he had failed to improve his conduct despite his assurances from time to time. Another aspect which was overlooked by the Labour Court was that on the finding of the enquiry officer that the respondent had misbehaved with his superior officer and was guilty of misconduct, the appellant could have dismissed the respondent from service. The appellant chose not to as so. Instead it passed an order of discharging the respondent from service. Lesser punishment having been given by the management itself there was, in our opinion, no justifiable reason for the Labour Court to have set aside the punishment so awarded. We are unable to accept that the punishment imposed by the management was in any way disproportionate to warrant interference by the Labour Court. The direction of the Labour Court ordering reinstatement of the respondent with forty per cent back wages was clearly unwarranted."

##. In view of the facts and circumstances of the case, this petition is allowed and the order passed by the Industrial Court, Ahmedabad passed in Appeal (IC) No. 23 of 1995 and Appeal (IC) No. 20 of 1995 dated 30.12.1996, whereby the petitioner - company was ordered to reinstate the respondent with full back wages with all other consequential benefits is quashed and set aside. Rule is made absolute to the aforesaid extent.

(SHARAD D DAVE, J)
srilatha